HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 196 OF 1992.

Maruti Balu Patil,
Post-Adulr Kond Karul,
Dist: Ratnagiri. ..Petitioner.

Versus.

Smt. Sulbha Prabhakar Patil,
Post- Adur, Kond Karul,
Tal: Guhanagar,
Dist: Ratnagiri. ..Respondent.

Shri. S. P. Thorat for the petitioner.

Shri. C.G. Parulekar for the respondent.

CORAM: S.B.MHASE,J.

DATE : MARCH 18, 2006.

Oral Judgment.:

1.? This writ petition is directed as against judgment and order passed by the Maharashtra Revenue Tribunal (Hereinafter referred to as "the MRT") on 30th September 1991 in a proceeding No. TNA -46 / 1991 whereby the said revision application was allowed and both the orders, ie., Order passed by the Sub-Divisional

Officer (Hereinafter referred to as "the SDO".) and Order passed by the Tahasildar, Chiplun were set aside, and the respondent who was revision petitioner before the MRT was declared to be the tenant of the suit land under section 70(b) of the Bombay Tenancy & Agricultural Land Act, 1948. (Hereinafter, in short referred to as "the Tenancy Act.").

2.? The proceeding arises from Tenancy Case 19 of 1986 (Number was wrongly quoted as 19 of 1987 by the Tahasildar). Respondent - Sulbha filed a tenancy case bearing No. 19 of 1986 under section 70(b) of the Tenancy Act seeking a declaration that the respondent is tenant of land - Survey No. 108/37 admeasuring 0-H, 3.3-R assessed at 48 paise, situated at Guhagar, Taluka- Guhagar, District- Ratnagiri. The said application was filed on 29th September 1986. By order dated 20.7.1987, Tahasildar, Guhagar allowed the said application and declared that the respondent is tenant of the said land. The said order of the Tahasildar was challenged by the petitioner - alleged landlord by filing tenancy appeal No.13

of 1987 before the SDO, Chiplun. The tenancy appeal No.14 of 1987 was decided on 20.12.1989 by the SDO, Chiplun. The said appeal was allowed and the order passed by Tahasildar in tenancy case No.19 of 1986, referred to above, was set aside and the matter was remanded for fresh inquiry in the light of the observations made in the said judgment.

After remand of case to Tahasildar, instead of continuing the case on previous number, it was re-numbered as Tenancy Case No.9 of 1990. After fresh inquiry, Tahasildar Guhagar by judgment dated 26.4.1990 decided Tenancy Case No.9 of 1990 (Original Tenancy Case No. 19 of 1986). By the said judgment, Tahasildar dismissed claim of the respondent that respondent is tenant of the suit land.The respondent, therefore, filed an appeal under section 74 of the Tenancy Act before the SDO, Chiplun being Tenancy Appeal No. 8 of 1990. The SDO, Chiplun by order dated

31.12.1990 dismissed the said appeal confirming the order of Tahasildar. The respondent, therefore, being aggrieved by both the judgments preferred Revision Application under section 76 of the Tenancy Act before the MRT which was numbered as TNA–46/1991. It was decided on 30th September 1991, as stated above. The revision application filed by the respondent before the MRT was allowed by the MRT by setting aside the judgment of Tahasildar, Guhagar and judgment of SDO, Chiplun,referred to above,and further declared that the respondent is tenant of the suit land. Therefore, the writ petitioner-owner of the said land has approached this Court invoking the jurisdiction of this Court under Article 227 Constitution of India.

3.? The respondent who initiated the proceeding under section 70(b), as stated above, has contended in Application that, since 55 years the suit land was/is openly and continuously in possession of her father-in-law as tenant, and that there are old coconut trees, newly planted

two Alphanso Mango trees, 10 trees of Bittle nuts in the said land. The respondent further contended that, in the said land there was/is a hut which bears Grampanchayat No.1276 and said hut stands in the name of Prabhakar Keshav Patil, who is husband of the respondent. The respondent has also claimed that the father-in-law of respondent had excavated a well in the said land. Respondent has further contended that on 24.9.1986 respondent's possession was obstructed, and therefore respondent made an inquiry as to whether the name of respondent was/is recorded in the record of rights, and it was found by the respondent that name of respondent was/is not in 7/12 extract. Therefore, respondent has filed application for declaration that the respondent is the tenant of the said land.

4.? Said application was opposed by the revision petitioner by filing a reply on 16.2.1987. (Wrongly stated on reply as 16.2.1986, however, from the roznama it is found to be 16.2.1987). Revision petitioner has contended that neither the father-in-law of respondent nor the husband of respondent was in possession and/or

in cultivation of the said land, and they were not the tenants of the suit land. It is specifically stated that the said land was cultivated by his deceased brother – Vithoba Baluba Patil during his lifetime and said land has been allotted by deceased Vithoba in the year 1960 to the petitioner in their family partition, and since then the suit land was/is in possession and cultivation of the petitioner and coconut trees, bittle nut trees and mango trees were planted by the petitioner. Petitioner has further stated that there is no well in the said land, but there is one ditch upto 2-3 feet deep which has water and the said water is used to irrigate the above referred to trees. The petitioner has further averred that there is a hut of 10-hands X 7-hands (length & breadth) and it has no grampanchayat number. It is used only to keep the fire-wood and similar material needed for cooking and the respondent has no concern with the said hut. It is specifically averred by the petitioner that grampanchayat number 1276 is/was not of the hut, but it is a number of a bathroom constructed by the respondent and the said bathroom is not in the

suit land but it is in the adjoining land, namely, Survey No. 108/38 wherein the respondent is having his common house. It is further averred that the respondent was not in possession of the suit land and, therefore, there was no cause to obstruct the possession on 24th September 1986 and application is false.

5.? Learned counsel for the petitioner submitted that MRT has committed a gross error in setting aside the concurrent judgments and findings of fact given by the Courts below, wherein it has been held that respondent - Sulbha is not a tenant of the suit land. He submitted that the findings of fact which have been arrived at by the Tahasildar and SDO were binding on the MRT and unless and until MRT finds those findings of fact are perverse, revisional jurisdiction could not have been exercised to disturb the decisions given by the Tahasildar and SDO. Learned counsel has taken this Court through the various documents and evidence on record and submitted that, if the evidence is taken into consideration it will be established that the respondent is

not tenant of the suit land and respondent has no concern with the suit land. The learned counsel for the petitioner emphathetically submitted that the case made out by the respondent and her witnesses is a conspiracy to grab the land of petitioner. He submitted that there is no evidence to show that the respondent was ever in possession of the suit land, and much more in the capacity of tenant. The learned counsel submitted that this is not a case wherein the provisions of Section 4 of the Tenancy Act are applicable, namely, the provisions for deemed tenancy. According to learned counsel it is a case wherein the respondent has tried to bring on record rent receipts, alleged to have been executed on 10.4.1957. Learned counsel submitted that the said rent receipt is/was got exhibited - by the petitioner to demonstrate that it is not a receipt in respect of payment being accepted by the revision petitioner. He also submitted that the disputed land was purchased by the brother of petitioner in auction which was conducted in view of an execution of Special Darkhast No. 101 of 1954, dated 23.3.1957 and Mutation Entry No. 2378 to

that effect has made in the record of rights. He further submitted that the land was transferred in the name of petitioner by Mutation Entry No. 2423 dated 27.11.1963 by his brother Govind. Thus, he submitted that, had there been a tenant in the suit land mutation entry would have been different. He further submitted that the land in question was in possession of the brother of petitioner, namely, Govind, as a tenant, and he heavily relied upon 7/12 extract which is on record from the year 1958 to 1986-87, i.e., till the date of filing of application by the respondent. Learned counsel for the petitioner submitted that 7/12 extracts have been misconstrued by MRT. He further submitted that the respondent has tried to make a show that bathroom bearing Grampanchayat No.1276 is in the suit land. However, learned counsel pointed out that Grampanchayat has issued certificate to the effect that the said bathroom has been constructed in view of a permission given by Resolution No. 2(3), dated 18.6.1985, and it is located in Survey No. 108/38 and it admeasures 12X7. Therefore, he submitted that the claim of the respondent that the

said bathroom is located in Survey No. 108/37 is/was incorrect one. Learned counsel submitted that the importance given by the MRT to Grampanchayat tax being paid by the respondent in respect of the said bathroom was unwarranted. All those tax receipts are of the years 1985 onwards, and, therefore it cannot be said that the said bathroom is located in the suit land.

? So far as oral evidence is concerned, learned counsel for the petitioner has taken me through the oral evidence of respondent and her witnesses and submitted that the evidence itself shows that there is an attempt to grab the property of the petitioner by making a false claim of tenancy in respect of the suit land. Learned counsel further submitted that application filed by respondent-Sulbha is misconceived one. According to the learned counsel, tenancy is being claimed by respondent being the heir of deceased Keshav, who was father-in-law of the respondent and who according to respondent was tenant of said land. He further pointed out that husband of the respondent, namely, Prabhakar, is alive and he is also having a

brother. He further submitted that the husband of the respondent is in service at Bombay and, therefore Sulbha (respondent No.1) not being a legal heir of Keshav who was father-in-law of respondent no.1, cannot claim and prosecute the tenancy rights. He submitted that Sulbha (Respondent No.1) is not a power of attorney holder for her husband and/or other heirs of deceased-alleged tenant Keshav, and,therefore, application itself is incompetent and misconceived and the attempt made by respondent no.1 in her statement before the Tahasildar after remand that respondent no.1 is prosecuting application for the joint family is after-thought. He further submitted that, even though it is assumed that she is prosecuting the application on behalf of the joint family she has no authority in law to continue such litigation. Therefore, he ultimately submitted that all these aspects have not been properly looked into by MRT and MRT has committed an error in relying upon the provision of Section 4 of the Tenancy Act which is pertaining to the deemed tenancy thereby learned counsel claimed that declaration of tenancy in favour of respondent is

thus bad, improper and unjust.

6. Learned counsel appearing for the respondent supported the judgment of MRT. He submitted that the Tahasildar and the SDO had committed an error in giving an undue importance to the receipt dated 10.4.1957 and the discrepancies in the said receipt to come to a conclusion that the respondent is not a tenant of the said land. The learned counsel for the respondent submitted that the respondent has examined the witnesses from the vicinity and adjoining lands who have deposed to that the respondent is in possession of the said land from years together and especially from the time of her father-in-law , and thus has proved the actual possession of the respondent in the suit land. He submitted that, since the possession of the respondent is not of the owner and/or as a labourer or member of the joint family of the petitioner, the only inference follows that it is a case of "deemed tenancy". Learned counsel submitted that, even though the rent was/is fixed and paid by the father-in-law of the

respondent and after him by the respondent, the rent receipts were not given by the landlord. Only one receipt was given which has been placed on record. Therefore, he submitted that the petitioner is trying to take advantage of the fact that rent receipts were/are- not given to the respondent and thereby to deny the tenancy of the respondent. Learned counsel submitted that MRT has rightly relied upon the judgment of this Court reported in Vol. 25-I of T.L.,pages-6 & 7 in Special C.A.479 of 1972 dated 20.11.1975 and submitted that the ratio of the said judgment has been rightly applied by the MRT to the facts and circumstances of the case. Therefore, there is no substance in the writ petition and writ petition be dismissed. Learned counsel further submitted that the tax receipts - are in favour of the respondent in respect of house No. 1276 and those receipts have been properly appreciated by MRT. He submitted that said house no. 1276 is a bathroom and it is located in the suit land. He submitted that the oral evidence corroborates the documentary evidence, and therefore the decision given by MRT is just and proper and no

interference is required to be caused by this Court.

7.? It is to be mentioned in the beginning that so far as the record of rights is concerned, there is 7/12 extract of Survey No. 108/37 on record from the year 1958 to 1986-87. In the said 7/12 extract the name of petitioner, namely, Maruti, appears in the occupancy column. It is to be noted that Survey No.108/37 along with Survey No.108/36 and Survey No.108/40 and along with other Survey Nos. were purchased by Govind Balu Patil in an auction sale dated 23.3.1957 which was conducted by the Tahasildar in DCR No. 1/1954 in view of Special Darkhast No.101/1954. In all 8 lands were purchased by Govind. Out of these 8 lands, 3 lands are the sub-divisions of Survey No. 108, namely, Survey Nos. 108/36, 108/37 & 108/40. These three sub-divisions from Survey No. 108, were purchased by Govind. The above information is reflected from mutation entry no. 2378 made on 15.5.1963. It is further revealed by mutation entry no.2423 dated 27.11.1963, that all the lands which were purchased by Govind, brother of the petitioner,

in above referred auction sale were transferred in the name of the petitioner, since the petitioner was Karta of the family and was looking after said Govind. It appears from the evidence that the said land was initially owned by Bhalchandra Ganpat Tawsalkar and thereafter his heirs and it was subsequently purchased by the brother of the petitioner, namely, Govind, and thereafter it was transferred in the name of the petitioner as stated above.

So far as 7/12 extract is concerned, since the same has been taken on 14.10.1986, the occupancy column shows the name of the petitioner. In the crop inspection column the said extract shows the details about the crop inspection from the year 1957-58 upto the year 1986-87. In the year 1957-58, name of Vithoba Balu Patil, who was one of the brothers of the petitioner, like that of Govind, was/is shown as a cultivator of the land by Mode No.-"3", that means said Vithoba (brother of the petitioner) was cultivating the land on crop share basis. There are entries in favour of Vithoba till the year 1961-63 by Mode

No-"3". Thus, it becomes evident that while Vithoba, one of the brothers of the present petitioner and Govind, was in possession of the said land as a tenant on the basis of crop share, the said property was purchased by Govind in auction sale. It appears that there was joint family of the petitioner, Vithoba & Govind. When in the year 1963 mutation entry no. 2378 was effected in favour of Govind the name of Govind was entered in occupancy column and equally in crop inspection column the entry was effected for the year 1962-63 as "Khud", that means-"the owner himself cultivates the land". Mode of cultivation was shown as "1". Said "Khud" entries are there in favour of Govind and thereafter in favour of Maruti till the year 1986-87 and the Mode of cultivation from the year 1962-63 is continuously "1", namely the owner himself is cultivating the land. It is further required to be stated that the entries from the year 1978-79 onwards have been misconstrued by MRT. From the year 1977-78the entry shows khud area - 0-H. 03.3-R. However, it is to be noted that the area of the land is 0-Hectare, 3.3-R, while writing

the area Number "point three" (i.e., 0.3) has gone into the Mode of cultivation column, and therefore in that column the figures "3" and "1" appear from the year 1978-79. The MRT has tried to construe this to the effect that the Mode of cultivation is shown as crop basis and/or as owner himself cultivating, and thereby there is uncertainty in respect of the Mode of cultivation. However, the said appreciation of the Mode of cultivation is erroneous if those entries in 7/12 extract are properly read. It reads as Khud 0-3.3 R. Therefore, the correct reading of those entries is that since the year 1962-63 till the year 1986-87, the mode of cultivation is "Khud", area 3.3-R and mode of cultivation is "1". This is elaborately dealt with for the purpose of proper analysis and understanding of the record. In other columns the crops have been shown, namely, Coconut tree, bittle nut trees, etc. However, what is pertinent to be noted is that the hut or bathroom has not been shown in the said 7/12 extract anywhere as the area occupied for the said purpose. On the contrary, total 0-H, 3.3-R area of the said

land has been shown under cultivation. Only in the year1986-87, coconut, mango and banana trees, well and hut, as alleged by the respondent, have been mentioned. It is required to be mentioned at this stage that the said 7/12 extract has been obtained by the respondent and produced by the respondent along with the application. However, what is pertinent to note is that, even in the last year 1986-87 the entries in the cultivation column show that the owner is cultivating the land, and therefore 7/12 extract is in favour of the petitioner and petitioner's family. There is no documentary evidence to show that the suit land was at any point of time was in possession of the respondent and/or her father-in-law.

8.? So far as bathroom is concerned, respondent has produced a certificate given by the Grampanchayat to the effect that in Grampanchayat House No. 1276 there is a bathroom of Mangalori tiles, admeasuring 12X7 ft, assessed at 2.25 and said bathroom belongs to Prabhakar Keshav Patil. The said certificate states that the said bathroom has been constructed in the year

1985-86. What is pertinent to be noted in respect of this certificate is that, this certificate does not show that the said bathroom,Grampanchayat House No.1276 is in Survey No.108/37, i.e., in the suit property. On the contrary, the petitioner has produced a certificate dated 13.3.1987 issued by Grampanchayat. It is stated in the said certificate that in Survey No.108/38 there is bathroom admeasuring 12X7 having Mangalori tiles and by ResolutionNo.2(3)dtd 18.6.1985 the permission to construct, has been given subject to the rights of the revenue department. Thus, from this certificate it will be seen that the Grampanchayat has certified that the said bathroom is not in Survey No.108/37, but it is located in Survey No.108/38. The assessment extract of House No.1276 given by the Grampanchayat shows the name of Prabhakar Keshav Patil, assessment, etc., but it does not show that the said bathroom is located in the suit land. Even the tax receipts which are produced on record does not show that the bathroom is located in the suit land.

9.? There is one more aspect which requires to

be taken into consideration is that, in the record, map of the suit land and adjoining lands has been produced by respondent. The said map is in accordance with scale of 1 inch = 2^1 /2 Sakhali, and One Sakhali means 33 feet. Therefore, 2^1 /2 Sakhali means 82^1 /2 feet, i.e., 1 inch distance = 82^1 /2 feet. To the north-west side of Survey No.108/37, Survey No.108/38 is located and in the said land there is house of respondent no.1 which stands in the name of her father-in-law Keshav along with three others, who are the co-owners of the said house. Location of house is shown in the map Bathroom bearing House No.1276 is admittedly adjoining to the said house. According to the respondent the said bathroom is adjoining to the said house but it is in the suit land bearing Survey No. 108/37. I have measured said distance and it is found that the distance between the house located in Survey No. 108/38 and the boundary of Survey No. 108/37 on west-north side is admeasuring 0.3 inches, and if the said 0.3 inches are converted into feet, it comes to 25 feet approximately. As against that the area of the said bathroom is only 12X7, and, therefore the case made

out by the respondent that the said bathroom is located in Survey No. 108/37 is falsified and the oral evidence to that effect cannot be said to be convincing and acceptable. On the contrary, the distance as calculated from the map and Certificate issued by the Grampanchayat on 13.3.1987 referred to above establishes that bathroom is located in Survey No. 108/38, and the oral evidence of the petitioner and her witnesses in this respect is not true and cannot be accepted.

? From the map which is at page 9 of the papers produced by the respondent, referred to above, it appears that to the south side of Survey No.108/37 the land Survey No.108/36 is located, while Survey No.108/35, 108/38 are located towards the western side. Towards the north side of Survey No. 108/37 there is Survey No. 108/39. And from the eastern side of Survey Nos. 108/36, 108/37 and 108/39, there is a streamlet. This position has been analysed for the purpose that Survey Nos. 108/36, 108/40 were also purchased in auction along with suit land as discussed above and Survey

No.108/36 is immediately adjoining to the suit land on the southern side and the said land is being cultivated by the petitioner and there is no dispute over that. The said land is approximately 3-R. It is, therefore, unlikely that Survey No. 108/36 is cultivated personally by the petitioner as against that Survey No.108/37 is cultivated through respondent. In the result the case made out by the respondent appears to be improbable one.

10.? Much importance appears to have been given by MRT to the report of Talathi, Adur. On perusal of the said report it is revealed that on the said report there is no date. Alongwith the said report there is a statement of respondent so also the statement of panchas. Both these documents (i.e.,statements) were prepared on 16.10.1986, i.e., after the presentation of the application under section 70(b) of the Tenancy Act, dated 29.9.1986. In a statement which was recorded by the Talathi, the respondent had stated that since 55 years the respondent was cultivating the said land as tenant and there were 3 old coconut trees, 4 new

coconut trees and other trees of bittle nuts, mangoes, etc., and her name may be recorded as a cultivator of the said land. The Panch-yadi shows that the said Panch-yadi is signed by one Maruti Sham Polekar and Shantaram Pandurang Patil. They have supported the statement of the respondent. These panchas have stated that the name of the respondent be entered into the crop inspection column as owner. Thus, after preparing the Panch-yadi, the Talathi has submitted a report to the Tahasildar that since last 55 years the respondent was/is cultivating Survey No.108/37, and that, the respondent had planted 3 old and 4 new coconut trees, 10 bittle nut trees and two Alphanso mango trees, and therefore, name of the respondent be entered in crop column of7/12 extract. Therefore, accordingly the entry has been taken to Form No.7-B and the report is submitted. This conduct of the Talathi is very surprising one. This report does not show that while making this enquiry and preparing the panchnama and/or while recording the statement of the respondent, the notice was given to the petitioner; This inquiry has been conducted and report has been prepared

by the Talathi behind the back of petitioner, and that too after the dispute had started under section 70(b) of the Tenancy Act. So called entry in Form No. 7-B was taken on 16.10.1986, which mentions that possession of suit land was with the respondent since 55 years. In fact, the Talathi can make an inquiry and find out prima facie who is in possession when he visits the site. That too he has to do after giving notice to all the persons interested in the said land. It is a fact that no notice was given to the petitioner and behind the back of petitioner all those documents have been prepared. This act of the Talathi is not in consonance with the Maharashtra Land Revenue, Record of rights and Registers (Preparation and Maintenance) Rules, 1971.

? Apart from that whenever the entries are to be effected in respect of any property creating a right in favour of any other person than the owner of the land, the revenue officers and the talathies are under an obligation to give notice to the owner of the land and to follow the procedure as provided in the Maharashtra Land

Revenue Record of Rights Registers (Preparation and Maintenance) Rules, 1971. In short, in the present case the report and panchnama, since they have been prepared behind the back of the petitioner, have no evidentiary value.

11.? The statement of the respondent-Sulbha was recorded by the Tahasildar twice in this case; For the first time it was recorded on 15.6.1987, and for the second time, after the remand of the case, it was recorded on 19.4.1990. In her first statement, in examination-in-chief itself the respondent had stated that the suit land was/is of the ownership of the petitioner, but the said land was/is being cultivated by the respondent as a owner. She had further stated that since the witnesses had changed their stand she was modifying her statement to the effect that "she is a tenant of the said land". She had further stated that since the time of her mother-in-law and father-in-law, for 55 years, the land was/is being cultivated by them but no rent was/is being paid in respect of the said land. She had stated that there were/are 11 coconut trees, 10 bittle nut trees and Banana trees. She had stated that there

was/is well and hut, and well had been excavated by her father-in-law and her name be entered as tenant.

12.? In cross-examination she had admitted that she was/is unaware as to since when the petitioner was/is owner of the said land. She also showed her ignorance as to whether the said land was owned by Mahadeo Jagkar and as to whether said Jagkar had sold the said land to Tawsalkar. She also showed her ignorance in respect of a fact as to whether from Tawsalkar suit land was purchased by the petitioner. So far as the cultivation was concerned, she had stated that she was/is unaware that since the date of purchase the land was/is cultivated by the petitioner. She also showed ignorance in respect of the auction. She admitted that her father-in-law expired in the year 1964. She also admitted that her house was/is in Survey No.108/38 and bathroom was constructed in her own land and Grampanchayat number of the said bathroom was/is 1276. She stated that in Survey No. 108/37 there was/is a hut constructed by her father-in-law.

? Thus, from her first statement it is found that she is claiming the property as owner, but the witnesses have not supported her case in respect of her ownership, therefore, she has modified her claim to that of tenancy. However, on reference to the panchnama prepared by the Talathi it reveals that panchas have stated that the respondent is cultivating the said land as owner. Therefore, it appears that, for the first time the stand was changed not by the panchas but by the respondent herself. It is further pertinent to note that in her statement she admitted that the bathroom is in Survey No. 108/38 which is the land of her ownership.

13.? In her statement after remand, she has stated about the boundaries of the land and further stated that Grampanchayat House No. 1276 is in the suit land. Then she has stated that the original owner of the land was one Balchandra Ganpat Tawsalkar and from his time and/or earlier to him her father-in-law started to cultivate the suit land as tenant. She has not stated what was the rent agreed. However, she

stated that the rent was Rs.50/- per year, and that rent for the period 1952-57, Rs.300/- was paid, and that there is a receipt to that effect executed by the petitioner. She has admitted that her husband resides at Bombay and works in Railway. She has further submitted that the Grampanchayat tax has been paid. She further stated that the rent receipt which was prepared in the year 1958 was prepared by Shankar Dhakatu Narvekar and rent was paid by her sister-in-law. She has stated that she is unable to state from whom and from which year, for the first time, the land was taken by her father-in-law or husband for cultivation.

14.? Thus, if both the statements of the respondent, i.e., statement recorded prior to remand and statement recorded after the remand, are taken into consideration, one can find that there are several material contradictions in the testimony of the respondent, and her statements being full of contradictions, are unsafe to be accepted as evidence.

15.? Witness Maruti Sham Kolekar was

examined twice, once prior to remand, and secondly, after remand. Prior to remand, he has stated that he knows that the respondent is cultivating the said land since last 40 years. However, he has categorically stated that he is unaware as to whether the respondent is cultivating the land as a tenant or owner. In his statement after remand, he has stated that at the eastern side of the suit land his land is located and suit land was being cultivated by the father-in-law of the respondent. However he has stated that, he does not know who is the owner of the said land.He stated that there is a bathroom and there was no cultivation by the petitioner. He admitted that at a distance of 1/4-Mile his house is located. He admitted that he is unable to state as to when the father-in-law of the respondent (namely, Keshav) expired. He is also unable to state whether Keshav (i.e., father-in-law of the respondent) was cultivating the said land as a tenant or owner. It is revealed that, even though this witness is claiming that he is the owner of the adjoining land, he has admitted in his statement prior to remand that the said land is

owned by this witness and by his cousin brother - Shankar Narayan, and that in the said land the actual cultivation is of Shankar Narayan alone. Then he modified his statement that both are cultivating the said land. Thus, on analysis of evidence of this witness, it is eloquently clear that, initially and even after the remand this witness has stated that he does not know in what capacity the respondent is cultivating the said land. In fact, he being the adjoining owner of the suit land, should have known the earlier owners of the said property. However, he has showed ignorance in respect of the earlier owners of the said land. On the contrary, it is brought on record that the land has been cultivated by his cousin brother and that he is residing at a distance of 1/4-Mile from the said land. That means, this witness is not an adjoining owner of the property. Finding of the MRT to that effect is erroneous. Therefore, it is not safe to accept the testimony of this witness.

16.? Witness-Nandkishor Madan Patil was

examined prior to remand. However, he was not examined after the remand. He has stated that the suit land is cultivated by the respondent, and the said land is being cultivated by the respondent as a owner. He has admitted in cross-examination that he is in the business of fisheries since last 10 years. He has admitted that there was a dispute in between his family and the petitioner on account of the portion of the house of the petitioner being in the land of the said witness. Thus, enmity has been established. Not only that, this witness is not supporting the respondent on account of the tenancy, rightly because this witness is not agriculturist as he is in the business of fisheries. But, it appears that due to the enmity with the petitioner, this witness is deposing in favour of respondent on the point of possession. Therefore, his testimony on the point of possession of the respondent in the said land cannot be accepted.

17.? It is further interesting to note that after remand, in stead of Nandkishor Patil, his mother Indira Patil was examined by the respondent. No doubt, she has stated that the

respondent is cultivating the suit land. But she has admitted that she is unable to tell since when she is married. She has stated that she is doing the business of fisheries. She stated that she knows that the suit land is owned by the father-in-law of the respondent as an owner and thereafter his sons Prabhakar and Moreshwar are the heirs. She is unable to tell the depth of the well. Thus, from her cross-examination it appears that her testimony is not supporting respondent. On the contrary, it appears that this witness does not know years of her own marriage. She has further gone to state that the father-in-law of the respondent was cultivating the said land as owner. However, this witness is not owner of the adjacent land. Therefore, it is not safe to rely upon the testimony of this witness. In fact this witness appears to be a got up witness who does not know anything about the dispute between the petitioner and the respondent.

18.? Makardhwaj Maruti Thakur was examined prior to remand and also after remand. He has stated that the suit land was being

cultivated by the respondent as a tenant while the petitioner being the landlord of the said land. However, in cross examination, he was unable to tell about the cultivation of other lands. After remand he has supported the case of the respondent. However, he is unable to state what was the income taken by the father-in-law of the respondent. He further admitted that he is unable to state how much coconut trees were planted by the father-in-law of the respondent. He also expressed his inability to tell the names of the owners of the said land. In fact, if he is the owner of the adjoining land and if he knows that the respondent or her father-in-law was/is cultivating the land as a tenant, then he is equally supposed to know the landlords of the said land. But ignorance of this aspect shows that this witness is a got up witness. Therefore, it cannot be said that this witness has any personal knowledge in respect of the cultivation of suit land.

19.? Thus, what this Court finds is that the oral evidence led by respondent is not consistent,

it suffers from the material contradictions and thereby it is unreliable.

20.? Much is discussed about the rent receipt dated 10.4.1958. It is Exhibit-"C" at page 71 of the file of the Tahasildar. The said receipt is as follows:

!! श्री !!

माहे एप्रिल रोजी तारीख 10/04/1958 रोजी चैत्र व. सात गु

रुवार रोजी देणार केशव यशवंत पाटील घेणार शंकर

धाकटू नावेंकर रोख रुपये 3शे अक्षरी रुपये तीनशे घेतले.

शंकर धाकटू नावेंकर
शंकर बाळु पाटील
मारुती बाळु पाटील

.? The said receipt is signed by Shankar Dhakatu Narvekar and Shakar Balu Patil. So also there is name/signature of petitioner. The main matter written on the said receipt and signatures of Narvekar and Shankar Patil are in "black" ink while alleged signature or name of the petitioner appears in "blue" ink. In order to prove the said receipt, prior to remand, sister-in-law of the respondent, namely, Vijaya, was

examined. However, for the reasons best known to the respondent, in chief-examination of said Vijaya the receipt was not proved. On the contrary, the questions were asked by the petitioner in respect of the said receipt in order to demonstrate that the transaction disclosed is not in between Keshav Yashwant Patil (father-in-law of the respondent) and petitioner, but it is a between Keshav Patil and Shankar Dhakatu Narvekar.

21.? After remand Shankar Dhakatu Narvekar has been examined as a witness No.5. He has stated that the said receipt is signed by him, it is written byShankar Balu Patil who was brother of the petitioner. He has identified the signatures of Shankar and the petitioner. According to this witness, the receipt was executed for payment of rent for six years and the said receipt was executed at the instance of earlier owner - Tawsalkar. According to this witness, it is rent for six years. He stated that the transaction was effected wherein he was a mediator. This witness is very closely related

to the petitioner, being the father of daughter-in-law of the petitioner. However, when the receipt was given to this witness for reading, he was not in a position to read the receipt since he was unable to see. He has stated at one time that the receipt was written at the house of Shankar Bapu Patil and he changed his version to say that the receipt was prepared in the house of Shankar Balu Patil. He has stated that he has not read the said receipt when it was written. He has further stated that he had not read the said receipt prior to signing the same. He has stated that he is not in a position to state as to whether he has taken Rs.300/- from Keshav Patil for his own needs. It appears that relations of this witness are strained with, and for last 20 years he had not visited the petitioner. Thus, on reading the testimony of this witness, it appears that this witness has tried to prove the said receipt, even though he is unable to read, write and see; because when he was asked to read the receipt he could not read the same. Therefore, it cannot be said that the signatures on said receipt are proved by this witness. On the

contrary, the receipt shows that the amount has been paid by Keshav Patil to Shankar Dhakatu Narvekar, and therefore the receipt has been executed by Shankar Dhakatu Narvekar in favour of Keshav Patil and for such a transaction, the petitioner appears to be a witness. That does not mean that the amount has been advanced to the petitioner.In fact, when there is a documentary evidence, the oral evidence to support the documentary evidence has to be brought on record. However, in the present matter, the documentary evidence shows that the transaction is in between Keshav and Shankar Dhakatu Narvekar, i.e., father-in-law of the respondent and this witness. The said transaction is not in between the father-in-law of the respondent and petitioner, and on the basis of it, it cannot be said that the amount of Rs.300/- was paid to the petitioner by way of rent for a period of six years. On the contrary, it can be very safely inferred that taking a pretext of the said receipt and having found that the petitioner is a signatory to the said receipt as a witness, the attempt is being made to show that

the rent in respect of the land has been paid to petitioner. Contents of the so called receipt and oral evidence is contrary to each other and therefore neither the receipt nor the testimony of this witness and witness-Vijaya inspire any confidence to accept the said evidence.

22.? Thus, taking into consideration the document as it is, coupled with the evidence of Vijaya, namely, sister-in-law of the respondent, and evidence of Shankar Narvekar, this Court finds that the documentary and oral evidence is absolutely self-contradictory, and therefore same cannot be taken into consideration.

23.? Evidence has been analysed for the purpose that all these aspects have been considered by the Tahasildar and the SDO when the application filed by the respondent was rejected holding that she is not a tenant of the said land. However, ignoring all these factual aspects and without pointing out any error in the appreciation of evidence and findings of fact recorded by the Courts below, the MRT entered into an area of fresh appreciation of

evidence and decided the matter. Therefore, the MRT while exercising the revisional jurisdiction has committed a serious error in re-appreciating the evidence and deciding the matter afresh. Apart from that whatever exercise the MRT has done in revisional jurisdiction was/is perverse if the evidence on record is properly appreciated.

24.? Apart from this, it requires to be stated that the husband of the respondent, namely, Prabhakar, is alive, her brother-in-law, namely, Moreshwar is also alive. So called tenancy is claimed by the respondent through her father-in-law, namely, deceased Keshav. During their lifetime, Prabhakar(husband of the respondent) and Moreshwar (brother-in-law of the respondent) who can be heirs to the so called tenancy, if at all, have not come forward to claim the tenancy rights. Therefore, respondent herself has no personal right. There is no power-of-attorney in her favour and when male co-pacners are available in the family, female is not entitled to file application in respect of the property of the joint family and much more for a declaration of a status.

.? An eleventh hour attempt made by the respondent stating that the application has been filed for and on behalf of the joint family, is misconceived. Therefore, this Court finds that the very application filed by the respondent for declaration of the tenancy is misconceived one and was not maintainable and tenable in law.

25.? Viewed from any angle, this Court finds that the view taken by the MRT was improper and unjust. This is not a case where Section 4 of the Tenancy Act will apply. On the contrary, in the present matter there is evidence to show that the respondent and her witnesses were not knowing as to when the tenancy has commenced, what were the terms and conditions of the tenancy. At no point of time they have admitted, except one receipt referred to above, that the respondent has paid rent to the owner. They have not paid rent to Tawsalkar and also to the petitioner. So called receipt as discussed above, is not in respect of the rent transaction, but it is for some other transaction, and that too between the

different persons. As analysed above, that receipt cannot be said to be a receipt between the tenant and landlord. This is the case wherein the efforts have been made to bring on record the document showing that the rent being paid. However, those efforts have been proved unsuccessful as analysed above. Therefore, it will be improper to give and extend the benefit of section 4 of the Tenancy Act in favour of the respondent. Thus, this Court finds that the MRT has committed a serious error in applying provisions of deemed tenancy in the facts and circumstances of the present case.

26.? Viewed from any angle, the judgment of the MRT is not just and proper and is required to be set aside. In the result, writ petition is allowed. Impugned judgment and order passed by the Maharashtra Revenue Tribunal, Mumbai on 30th September 1991 in Tenancy Appeal No. 46 of 1991 is hereby quashed and set aside and Tenancy Case No. 9 of 1990 filed by the respondent under section 70(b) of the Bombay Tenancy & Agricultural Lands Act, 1948 is hereby dismissed. Rule is made absolute accordingly.

(S.B.MHASE, J.)